

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
McALLEN DIVISION

GREGORIO TREVINO, JR., ET AL,	§	
<i>Plaintiffs,</i>	§	
	§	
V.	§	CIVIL ACTION NO. 7:15-cv-00435
	§	JURY REQUESTED
	§	
HIDALGO COUNTY, ET AL,	§	
<i>Defendants</i>	§	

**DEFENDANTS' OPPOSED MOTION FOR REHEARING OF OPPOSED MOTION  
FOR RECONSIDERATION OF MOTIONS FOR SUMMARY JUDGMENT OF  
DEFENDANTS, HIDALGO COUNTY, A.C. CUELLAR, RAUL LOZANO, DAVID  
RODRIGUEZ, OSCAR GONZALES AND ESTEBAN MATA, AS TO THE CLAIMS  
OF PLAINTIFF SANTIAGO ZAVALA**

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

NOW COME DEFENDANTS, HIDALGO COUNTY, A.C. CUELLAR, RAUL LOZANO, DAVID RODRIGUEZ, OSCAR GONZALES AND ESTEBAN MATA (“Hidalgo County Defendants”), and file their Opposed Motion for Rehearing their Opposed Motion for Reconsideration of their Motions for Summary Judgment as to the claims of Plaintiff SANTIAGO ZAVALA, and in support of same, would respectfully show:

**1.0 BACKGROUND AND REQUEST**

1.1 On November 18, 2019, Defendants filed their Opposed Motion for Reconsideration of their Motions for Summary Judgment as to the claims of Plaintiff Santiago Zavala. Such motion was set for hearing at 4:00 p.m. on March 24, 2020.

1.2 The undersigned counsel for Hidalgo County Defendants had planned to attend the March 24<sup>th</sup> hearing in person, however, the day before, I received a call from Alex De La Garza, Judge Hinojosa’s Case Manager, directing me to appear by telephone. On March 25<sup>th</sup>, I reviewed the relevant documents in preparation to argue the subject motion. At 3:55 p.m., following Mr.

De La Garza's instructions to the letter, I was able to connect into the telephone conference call and speak with Tony Tijerina. I announced myself and heard adverse counsel announce himself. Both before and after Mr. Najvar announced his presence, there was only silence on the line while waiting for the court to call the case until it suddenly disconnected to a dial tone after approximately 25 minutes. I immediately called back in an attempt to reconnect to the conference call, but was unable to do so. At the same time, a Deputy United States District Clerk called to advise me that there had been a problem with the telephone connection. I was advised that when Mr. De La Garza was out of court, he would call me back to reschedule the hearing. I was, therefore, surprised when a short while later, the Court issued a minute entry indicating that I had not appeared for the hearing and that the Hidalgo County Defendants' Motion for Reconsideration was denied.

1.3 Accordingly, the Hidalgo County Defendants respectfully request that the Court reset the hearing on their Opposed Motion for Reconsideration of their Motions for Summary Judgment as to the claims of Plaintiff Santiago Zavala on a time and date convenient to the Court's schedule.

1.4 While we understand a natural reluctance to reconsider any order entered by the previously assigned judge, a review of the order denying the motion for summary judgment as to Plaintiff Zavala revealed that such denial was based on a critically incorrect recitation of the evidence considered. In relevant part, Judge Crane stated:

Although Plaintiff Zavala's claims of political retaliation are tenuous, the Court considers that there is a genuine dispute as to the independent reason for Plaintiff Zavala's termination which precludes summary judgment. Defendants cannot show that Plaintiff Zavala's exhaustion of FMLA leave was the substantial or motivating factor in his termination by a preponderance of the evidence *if Plaintiff Zavala had not exhausted his FMLA leave*. The issue of pretext is best left to the fact finder (emphasis added). Doc. # 64, page 29.

Under the facts most favorable to the Plaintiff, Zavala became eligible for 12 weeks FMLA leave on

May 6, 2014. Commissioner Cuellar **granted** his leave request beginning May 6<sup>th</sup> and **granted 5 more** sequential requests for leave continuously for **16 weeks** and did not terminate him until September 4, 2014, **17 weeks and 2 days** after his leave began. The last day of FMLA entitlement was on July 29, 2014, so Zavala had exhausted any entitlement to FMLA when he was terminated 5 weeks later. Such facts are not in dispute. Further, Defendants do not claim that exhaustion of (12 weeks) FMLA “was the substantial or motivating factor in his termination.” Commissioner Cuellar’s letter of termination stated:

The continuation of your leave of absence has created a substantial hardship with regard to the operation of Hidalgo County Precinct #1, and there is a business necessity to fill the position that you have occupied.” Doc. #41-6, Exhibit 3 to Defendant’s Opposed Motion for Reconsideration.

It strains credulity to consider such termination to have been based upon a political retaliation for speech and assembly which allegedly occurred over 21 months before termination, despite having granted 6 requests for leave, totaling a period of 16 weeks. The evidence also shows that Defendant had been granted at least 16 weeks of **additional** leave during the 12 months prior to May 6, 2014, for a total of at least 32 weeks of leave during the period of April 30, 2013 to August 26, 2014. In other words, he was granted leave by Commissioner Cuellar for 32 out of 69 calendar weeks prior to his termination.

1.4 **Certificate of Conference.** The undersigned counsel for the Hidalgo County Defendants conferred with counsel for Plaintiffs and counsel for Plaintiffs is opposed to this motion.

WHEREFORE, PREMISES CONSIDERED, the Hidalgo County Defendants pray for the requested relief, and for such other and further relief, at law or in equity, to which they may be justly entitled.

Respectfully submitted,

*/s/ Preston Henrichson*

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**PRESTON HENRICHSON**  
**Texas Bar No. 09477000**  
**Federal I.D. # 1922**  
**HENRICHSON LAW PLLC**  
**222 West Cano**  
**Edinburg, TX 78539**  
**Telephone: (956) 383-3535**  
**Facsimile: (956) 383-3585**  
**[preston@henrichsonlaw.com](mailto:preston@henrichsonlaw.com) & [sian@henrichsonlaw.com](mailto:sian@henrichsonlaw.com)**  
**ATTORNEY IN CHARGE FOR HIDALGO COUNTY**  
**DEFENDANTS**

**CERTIFICATE OF SERVICE**

This is to certify that on the 26<sup>th</sup> day of March, 2020, a true and correct copy of the above and foregoing was forwarded via Certified Mail, Return Receipt Requested, via first class mail, or via e-mail through the Electronic Case Filing System, to all counsel of record.

*/s/ Preston Henrichson*

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For the Firm

Mr. Jerad Wayne  
Najvar NAJVAR  
LAW FIRM  
4151 Southwest Freeway, Suite 625  
Houston, Texas  
77027 Attorney for  
Plaintiff VIA ECF